



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Aetna Life Insurance Company

**Respondent Name**

WC Solutions

**MFDR Tracking Number**

M4-10-3504-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

March 30, 2010

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Aetna Life Insurance asserts that it paid medical service claims totaling \$526.79 which clearly should have been billed to, and paid in good faith by the workers' compensation carrier in this case."

**Amount in Dispute:** \$526.79

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "It is the Respondent's position that the requestor failed to meet their burden of proof of timely filing for the 04/01/09 and 04/06/09 dates of service and failed to provide the requested medical documentation."

**Response Submitted by:** Edwards Claims Administration, Starr Comprehensive Solutions, 1004 Marble Heights Drive, Marble Falls, Texas 78654

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 1, 2009 and April 6, 2009	73560, 73562, 73610, 73590, A0427, A0425 and 99213	\$526.79	\$526.79

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. Texas Labor Code §409.0091 sets out the requirements for health care insurers to bill for and receive reimbursement from workers' compensation carriers for services provided to covered Texas injured employees.
2. 28 Texas Administrative Code §102.3 applies to the computation of time.
3. 28 Texas Administrative Code §140.7 applies to Health Care Insurer Reimbursement.
4. 28 Texas Administrative Code §140.8 applies to Reimbursement of Medical Benefits.
5. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

## Issues

1. Did the health care insurer timely file a request for reimbursement from the workers' compensation insurance carrier?
2. Where the workers' compensation insurance carrier denial reasons supported?
3. Is reimbursement due to the health care insurer?

## Findings

Texas Labor Code §409.0091 was added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8, and is effective for dates of injury on or after September 1, 2007, with few exceptions. The requestor of this medical fee dispute is Medrecovery management. Medrecovery management is an authorized representative of Aetna Life Insurance Company - a health care insurer as defined by Texas Labor Code §409.0091(a). Medrecovery management and Aetna are collectively referred to as the subclaimant for the purposes of this medical fee dispute. Texas Labor Code §409.0091(c) states that health care paid by a health care insurer may be reimbursable as a medical benefit. The subclaimant alleges it paid for services provided to an injured employee with a compensable Texas workers' compensation claim and is seeking to recover \$526.79 from WC Solutions - a Texas workers' compensation insurance carrier – hereto after referred to as the carrier. The provisions of Texas Labor Code §409.0091, and 28 Texas Administrative Code Rules §§140.7 and 140.8 apply to this request for reimbursement.

1. In order for the subclaimant to recover amounts it paid on behalf of the injured employee that received the services in dispute, the subclaimant must request reimbursement from the carrier in the form, manner and timeframes prescribed by Texas Labor Code §409.0091. Two concurrently running deadlines define the amount of time the subclaimant has to make a request for reimbursement from the workers compensation carrier. These are found at Texas Labor Code §409.0091(n). The subclaimant's submission for reimbursement must be sent not later than six months from the date of a data match, and not later than 18 months from the date that the subclaimant originally paid health care providers for the services in dispute. The division now considers the available documentation in order to establish the date of a request for reimbursement, the data match date, and the date that the subclaimant originally paid for the services in dispute in order to establish whether the request for reimbursement was timely.

### Date of Request for Reimbursement

The subclaimant is required to provide the information denoted in Texas Labor Code §409.0091(f) with any request for reimbursement it makes to the carrier. Division rule at 28 Texas Administrative Code §140.8(c) (1) requires that the request for reimbursement "be in the form and manner prescribed by the Division of Workers' Compensation (Division) and must contain all the required elements on the form." The division prescribed DWC Form-026 titled *REQUEST FOR REIMBURSEMENT OF PAYMENT MADE BY THE HEALTH CARE INSURER* for use by subclaimants when making a request for reimbursement pursuant to §409.0091.

The subclaimant alleges that it first billed the carrier using DWC Form-026 on December 11, 2009. Review of the documentation available finds correspondence dated January 27, 2010 from Edwards Claims Administration, a representative of the carrier. The letter is addressed to MedRecovery Management to the attention of Susan Esford and states that "On December 18, 2009, we received your DWC-26 form requesting reimbursement for the above named patient, date of service, and billed amounts." This correspondence referred to the same injured employee, and date of service involved in this medical fee dispute.

The division therefore concludes that the subclaimant billed the carrier on or about December 11, 2009, and that the carrier confirmed in its letter that it received the DWC Form-026 on December 18, 2009.

#### Data Match Date

The requestor alleges that it received a data match pursuant to Texas Labor Code §402.084(c-3) from the division on November 19, 2009. A sworn affidavit dated February 2, 2010 and signed by Susan Esford, a representative of the subclaimant, affirms that a response file named tx161510689142073027066033492251p20091028093015.zip was sent by the division and received by the subclaimant. The subclaimant further affirms that the file contained 65,931 separate matches including one match for the injured employee and the division-assigned claim number consistent with the injured employee identified as the recipient of the services in dispute. Comparison to the division's records supports the assertions made by the requestor in the sworn affidavit.

The division finds that the subclaimant reasonably supported that it received a data match identifying the injured employee that received the services in dispute.

#### Payment Dates

A document titled "Aetna Life Insurance Co. – Trad – TX Billing Transmittal" which identified the injured employee that received the services in dispute, and supports that the health care insurer or subclaimant:

- paid \$109.60 to health care provider Pedro Z. Taussig, tax id 760442065 on April 29, 2009, for professional services totaling \$140.00, provided on April 1, 2009;
- paid \$25.99 to health care provider Mauricio Antonio Escobar, tax id 742046769 on April 7, 2009, for professional services totaling \$70.00, provided on April 6, 2009; and
- paid \$381.20 to health care provider Frio Cnty Emerg Amb Serv, tax id 746003549 on April 15, 2009 for ambulance services totaling \$766.00, provided on April 1, 2009.

The division finds that the subclaimant supported that it paid for the services in dispute.

Comparison of the data match date to the date that the carrier acknowledged receipt of a request for reimbursement from the subclaimant, finds that the subclaimant billed the carrier within the required 6-month deadline. Furthermore, comparison of the dates that the subclaimant paid for the services in dispute to the billing date finds that the subclaimant sent a request for reimbursement from the carrier within the required eighteen month deadline. The division concludes that the subclaimant met both of the timeliness requirements pursuant to Texas Labor Code §409.0091(n).

2. On January 27, 2010 the carrier sent a letter to the subclaimant explaining why the subclaimant's request for reimbursement was not processed. This letter reads, in pertinent part:

On December 18, 2009, we received your DWC-26 form requesting reimbursement for the above named patient, dates of service, and billed amounts. In order to assist us with your request, please provide the following information:

- The date you received the Claims Data provided by the DWC under Section 402.084 c-3.
- Copy of the medical records substantiating services rendered by Dr. Mauricio Escobar on 04/06/09. Medical documentation for 4/1/09 is on file, therefore, it is not requested.

In regards to the data match date, Texas Labor Code §409.0091 does not specifically require a data match date with the initial request for reimbursement, nor did the version of the DWC Form-026 submitted at the time, require the data match date. Although the data match date is not "statutorily required" as part of a request for reimbursement as the carrier alleges, the division finds the carrier's request for the data match date is reasonable and relevant as a request for additional information pursuant to Texas Labor Code §409.0091(j). Documentation found supports that the subclaimant previously provided the respondent with a sworn affidavit attesting to the data match file named tx161510689142073027066033492251p20091028093015.zip. The affidavit contained very detailed information about the data match request file to the division, and response file from the division. The subclaimant also offered an explanation that that a copy of the data match file could not be provided because it contains "confidential information on a large number of individuals and workers' compensation

cases.” The division compared the data match information on the sworn affidavit to its records and was able to verify the existence of a data match containing information related to the specific injured employee involved in this medical fee dispute.

In regards to the request for medical records, the division finds that Texas Labor Code §409.0091(f) does not require medical records as part of a request for reimbursement under §409.0091. Additionally, the division finds that the intent of the law at Texas Labor Code §409.0091 was for health care insurers and workers’ compensation insurance carriers to cooperate and be reasonable when it came to requests for medical records. Specifically, the adoption preamble to 28 Texas Administrative Code §140.8 adopted to be effective September 23, 2008, 33 TexReg 8002, states:

Commenter states that the health care insurer and its agents have no problem providing additional information to a workers’ compensation insurance carrier if that information is within the possession of either entity. The commenter also states that this was a good faith agreement between the parties in the legislative negotiations to cooperate when additional information was needed by the workers’ compensation insurance carrier...The commenter states that it was recognized that certain information, **such as medical records** [emphasis added], were not in the possession of either the health care insurer or its agents, and the workers’ compensation insurance carrier may need that information, the solution was to allow the parties to enter dispute resolution to enable either the agency or an independent review organization to request information in the possession of third parties or that could not be obtained by other means. Agency Response: The Division agrees with the comment in part and agrees to change the wording as follows: "It is the health care insurer's obligation to furnish its authorized representatives with any information within its possession or control that is necessary for the resolution of a reimbursement request." Also, hearing officers have been delegated authority to approve subpoena requests to enable parties to properly prepare and possibly reach an agreement before requesting dispute resolution.

Review of the information and documentation provided including the initial DWC Form-026 and the subsequent information provided by the subclaimant finds that the workers’ compensation insurance carrier had the information necessary to resolve a reimbursement request for the disputed services. For that reason, the division finds that the carrier’s request for medical records is unsupported when taking into account the intent of TLC §409.0091 and 28 TAC §140.8.

The division’s medical fee dispute resolution program concludes that the information and documentation provided by the subclaimant is sufficient to substantiate that a complete and timely request for reimbursement was made. For that reason, the division finds that the services in dispute are eligible for payment pursuant to Texas Labor Code §409.0091(h).

3. For the reasons stated above, the division finds that the services in dispute are eligible for payment. Applicable Texas Labor Code §409.0091(h) states, in part:

For each medical benefit paid, the workers’ compensation insurance carrier shall pay to the health care insurer the lesser of the amount payable under the applicable fee guideline...or the actual amount paid by the health care insurer.

The Texas medical fee guidelines are found at Title 28, Part 2, of the Texas Administrative Code (TAC). The general Medical Reimbursement Rule at 28 Texas Administrative Code §134.1(e) requires that:

(e) Medical reimbursement for health care not provided through a workers’ compensation health care network shall be made in accordance with:

- (1) the Division's fee guidelines;
- (2) a negotiated contract; or
- (3) in the absence of an applicable fee guideline or a negotiated contract, a fair and reasonable reimbursement amount as specified in §134.1(f).

For the disputed professional service codes, a division fee guideline exists. The fee rules listed below are used to calculate the division's allowable fee guideline for comparison to the amounts that the health care insurer (HCI) paid pursuant to §409.0091(h) as follows:

Date of Service	Service / Rev Code	Zip Code Service Location	Fee Rule 28 TAC	Fee Guideline Allowable	Amount Paid by HCI	§409.0091(h) Lesser of Fee Guideline and HCI Paid
04/01/2009	73560	77515	§134.203	\$37.73	\$24.00	\$24.00
04/01/2009	73562	77515	§134.203	\$45.54	\$28.00	\$28.00
04/01/2009	73610	77515	§134.203	\$41.03	\$29.60	\$29.60
04/01/2009	73590	77515	§134.203	\$36.32	\$28.00	\$28.00
04/06/2009	99213	78061	§134.203	\$86.49	\$25.99	\$25.99
						\$135.59

For the disputed ambulance service codes, no division fee guideline exists therefore reimbursement must be a fair and reasonable amount as specified in §134.1(f).

- (f) Fair and reasonable reimbursement shall:
- (1) be consistent with the criteria of Labor Code §413.011;
  - (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and
  - (3) be based on nationally recognized published studies, published Division medical dispute decisions, and/or values assigned for services involving similar work and resource commitments, if available.

The amounts the subclaimant paid for ambulance are also the amounts the subclaimant is seeking to recover in this medical fee dispute. Texas Labor Code §409.0091(h) states, in pertinent part that:

In the absence of a fee guideline for a specific service paid, the amount per service paid by the health care insurer **shall** be considered in determining a fair and reasonable payment under rules under this subtitle defining fair and reasonable medical reimbursement.

In this case, the amount that the subclaimant is seeking is the same amount it paid for services provided to the injured employee covered by the workers' compensation carrier. This fact, in and of itself, meets the criteria for a fair and reasonable amount of reimbursement because the requested reimbursement is for the same procedures provided in the same circumstance to the same individual injured employee. No comparison is therefore needed to establish whether the amounts paid by the subclaimant meet the criteria that "values assigned for services involving similar work and resource commitments." The division concludes that the amount paid by the health care insurer is fair and reasonable. The remaining services are therefore allowed for reimbursement as follows:

Date	Service / Rev Code	Fee Rule 28 TAC	Bill Amount	Amount Paid by HCI	§409.0091(h) No Fee Guideline
04/01/2009	A4029	None	\$750.00	\$380.00	\$380.00
04/01/2009	A0425	None	\$16.00	\$11.20	\$11.20
					\$391.20

The Division finds that the total recommended allowable for the services in dispute is \$526.79.

### **Conclusion**

The division concludes that the subclaimant's request for reimbursement is sufficiently supported. Reimbursement in the amount of \$526.79 is recommended. Pursuant to Texas Labor Code §409.0091(h), the subclaimant may not recover interest as part of this subclaim.

The division emphasizes that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution. Even though all the evidence was not discussed, it was considered.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The division hereby ORDERS the respondent to remit to the requestor the amount of \$526.79, without interest, due within 30 days of receipt of this Order.

### **Authorized Signature**

_____	_____	March 4, 2016
Signature	Medical Fee Dispute Resolution Manager	Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MFDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of this *Medical Fee Dispute Resolution Findings and Decision*, together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**